

**DUFFERIN COUNTY COUNCIL  
ADDENDUM**



**Thursday, May 13, 2010  
7:00 p.m.**

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**4. PRESENTATIONS, DELEGATIONS AND PROCLAMATIONS**

- 4.6** Delegation – Mr. Charles Powell, Glaholt Barristers & Solicitors – Tender No. PW-10-04 – Pavement Rehabilitation County Roads 2, 9 and 21.

**7. CORRESPONDENCE**

- 7.3** East Garafraxa Resident – Forest Conservation By-law

**GLAHOLT LLP**

BARRISTERS & SOLICITORS

**CHARLES S. POWELL**

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May 11, 2010

**VIA EMAIL: clerk@dufferincounty.on.ca**

The Corporation of the County of Dufferin  
51 Zina Street  
Orangeville, Ontario,  
L9W 1E5

**Attention: Ms. Pam Hillock, Clerk**

Dear Ms. Hillock:

**Re: GCCL Contracting Limited**  
**Re: The Corporation of the County of Dufferin**  
**Re: Tender No. PW-10-04, Pavement Rehabilitation County Roads**  
**2, 9 and 21**  
**Our File No. 55/10**

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We are lawyers for GCCL Contracting Limited ("GCCL").

We wish to address Council by deputation during the upcoming Council meeting scheduled for May 13, 2010. We have had the opportunity to review the published Agenda for the Council meeting of May 13, 2010 and request to address Council with respect to the recommendation to award Tender PW-10-04.

Please find enclosed our letter of today's date to Mr. Allen Taylor, Warden, County of Dufferin; Ms. Suzanne Hannath, Acting Deputy Treasurer, County of Dufferin; and, Mr. Trevor Lewis, P. Eng., Director of Public

Works, County of Dufferin which contains full particulars of the subject matter of our deputation.

We will seek Council's consent to our deputation at the meeting on Thursday, May 13, 2010.

Yours very truly,

**GLAHOLT LLP**

**Per:**

A handwritten signature in black ink, appearing to read 'C. Powell', written over a horizontal line.

Charles S. Powell

csp

Encl.

GLAHOLT LLP

BARRISTERS & SOLICITORS

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CERTIFIED BY THE LAW SOCIETY  
AS A SPECIALIST IN CONSTRUCTION LAW

May 11, 2010

**VIA EMAIL: [warden@dufferincounty.on.ca](mailto:warden@dufferincounty.on.ca)**  
**[shannath@dufferincounty.on.ca](mailto:shannath@dufferincounty.on.ca)**  
**[tlewis@dufferincounty.on.ca](mailto:tlewis@dufferincounty.on.ca)**  
**AND BY OVERNIGHT COURIER**

The Corporation of the County of Dufferin  
51 Zina Street  
Orangeville, Ontario,  
L9W 1E5

**Attention: Mr. Allen Taylor, Warden, County of Dufferin**  
**Ms. Suzanne Hannath, Acting Deputy Treasurer,**  
**County of Dufferin**  
**Mr. Trevor Lewis, P.Eng, Director of Public Works,**  
**County of Dufferin**

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Dear Sirs and Madam,

**Re: GCCL Contracting Limited**  
**Re: The Corporation of the County of Dufferin**  
**Re: Tender No. PW-10-04, Pavement Rehabilitation County**  
**Roads 2, 9 and 21**  
**Our File No. 55/10**

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We are solicitors for GCCL Contracting Limited.

On April 15, 2010 our client submitted a compliant tender to the County of Dufferin for tender PW-10-04, thereby creating a binding tendering contract between itself and the County upon the terms set

out in the County's Instructions to Bidders, and the County fell under a duty at law to treat all compliant bidders fairly and equally in accordance with disclosed tender criteria.

Our client has since received Acting Deputy Treasurer Hannath's correspondence of May 7, 2010 stating that the award of tender PW-10-04 will now come before Council on May 13, 2010.

The Public Works Committee Agenda, Item 4 under the heading "Reports", states that it will be recommended to County Council that tender PW-10-04 be awarded to Furfari Paving in the amount of "\$1,837,041.10 plus GST" (i.e. \$1,928,893.16, taxes included). Please note that this recommendation differs from the Furfari Paving number of \$1,927,100.36, taxes included, that was read out at the public tender opening.

GCCL's price, taxes included, is \$1,913,634.96, which is less than the Furfari Paving price on any analysis.

On the basis of disclosed tender criteria, GCCL is low compliant bidder and is entitled to award of PW-10-04.

If other criteria have been applied or calculations made by the Director of Public Works in considering the Furfari Paving tender, please advise at once, with full production and particulars. Please also provide us immediately with the report of the Director of Public Works dated April 27, 2010.

A representative from our firm will attend the Council meeting on Thursday, May 13, 2010 to make a deputation in this regard.

In the event that the County of Dufferin breaches its tender contract with our client by proceeding to award to Furfari Paving on one of its two inconsistent tax included numbers, or on any basis other than the

disclosed tender terms treating the parties fairly and equally, we will seek instructions to recover our client's damages.

In this regard, kindly accept this letter as GCCL's notice to the County of Dufferin that any and all relevant documents created and retained electronically must be retained for the purpose of the resolution of this dispute and the County is required to take reasonable steps immediately to preserve all electronic documents for the purpose of the resolution of this dispute.

Yours very truly,

**GLAHOLT LLP**



Duncan W. Glaholt  
DWG/dwg

From: Charles Hooker

Sent: Tuesday, May 11, 2010 8:37 AM

To: Linda Dean

Cc: Rob Adams; K Bennington; Morley Brown; E Crewson; Michelle Dunne; Debbie Fawcett; L Haddock; Bill Hill; Pam Hillock; Ken McGhee; Walter Kolodziechuk; Caroline Mach; D Maciver; W Maycock; Gordon Montgomery; John Oosterhof; Neil Orford; S Snider; A Taylor; Wayne Townsend; Carl Cosack

Subject: Forest Conservation Bylaw

Dear Ms Dean:

Having perused the latest draft (2010-12) of the subject bylaw, which was posted on the county web site only yesterday (10 May), I find that it is an improvement over the previous bylaw (2006-15) but I continue to have two concerns. Please advise the county council.

Paragraph 10 says that, if all bylaw conditions are met, the woodland owner "may" be granted a permit to harvest his trees. The word "may" leaves the bylaw open to abuse by authorities who may wish for private reasons to reject an application. The bylaw is open-ended - ie, there is no limit on the extent on its span of control. Any lawyer will probably say that the word "may" makes it a bad bylaw. I seek Mr Crewson's opinion in this matter. Please change the word "may" to "shall."

Secondly, Paragraph 21 establishes a minimum fine of \$500. Yesterday I received a letter from the federal Minister of Justice/Attorney General. He says:

"For most offences, Parliament has prescribed only maximum sentences, thereby allowing judges to determine appropriate sentences that are proportionate to the relevant circumstances of each case....We are working with our provincial and territorial counterparts...to explore further reforms to the justice system."

I suggest that the minimum punishment be deleted, to conform to accepted legislative practice in federal and Commonwealth jurisdictions.

Changes to this bylaw over the past 13 years have surpassed the rate at which the 18,000 trees I have planted can grow to harvestable age. Normally, a law controls activities that occur after the law is passed, but the Forest Conservation bylaw reaches into the past for tree growers, after we have planted our trees and planned future harvests. There is no grandfather clause for trees. I ask you to remember this fact when amending and approving the bylaw.

I thank the county council in advance for its consideration.

Charles Hooker RR # 2 Orangeville, Ontario L9W 2Y9